

## **AGREEMENT IN PRINCIPLE**

U.S. EPA, Illinois EPA, the Illinois Attorney General and the undersigned members of the Ellsworth Industrial Park Group ("Group") enter this Agreement in Principle ("Agreement") to outline their expectations and understandings concerning certain response activities to be conducted at the Ellsworth Industrial Park site.

### **1.     Hookups.**

The Group members will make their best efforts to enter into the necessary binding agreements by August 2003 with the Village of Downers Grove, DuPage County, U.S. EPA and Illinois EPA concerning the funding of the hookups of homes in the relevant area to Lake Michigan water.

The Group will make financial arrangements for funding of up to \$4.275 million to cover the local share of grant funding for infrastructure work by the Village of Downers Grove and the anticipated cost of payments on the twenty year loans made through the County/DWC low interest loan program to be used to finance the hookups for those residences in the subject area utilizing that program to finance hook-ups. The parties expect that \$4.275 million will be sufficient to cover the local share and the hookup of all homes entered into the program.

The United States has recently made an appropriation of approximately \$430,000 to the County to help address TCE contamination in the County. Any portion of these funds used to help pay for the hookups will reduce the Group members' funding obligations and will be applied as permitted.

In recognition of the Group's commitment to contribute funds toward hookup on an expedited and voluntary basis and in furtherance of the parties' willingness to consider a further Site investigation and (if necessary) cleanup, U.S. EPA and Illinois EPA will defer the issue of recovery of their past costs at the Site -- not requiring payment of those costs as part of the hookup settlement. The federal hookup settlement will provide appropriate contribution protection in favor of the participants, covenant not to sue, and confirmation that U.S. EPA has determined that the work to be implemented is consistent with the NCP and that the costs are necessary costs of response

### **2.     Site Investigation Process.**

The Parties understand and expect that after the hookup agreements are completed, the Agencies' activities at the Site will proceed as follows:

a). U.S. EPA and Illinois EPA will conduct and pay for screening sampling (similar to the Agencies' Phase 1 investigation at the Site) at parcels other than those of participating PRPs at and around the industrial park. The Agencies will seek and consider suggestions from the Group on sampling locations to investigate other parcels and potential groundwater flow patterns. Copies of the sampling results will promptly be furnished to the Group.

b) U.S. EPA will divide the Site into two operable units; a Source Area OU1 and a Downgradient Groundwater OU2.

c) After receiving the screening sample results, U.S. EPA (in consultation with the State) will prepare a detailed draft Scope of Work and/or Work Plan for RI/FS investigation of the Source Area OU1. This RI/FS would focus on soil and groundwater VOC contamination in the Park. In preparing such documents, the Agencies intends to take into account all sampling and other data previously collected by the Agencies and/or provided by Group members, and will work with the Group to tailor any investigation of individual parcels to take into account sampling data that has already been gathered. The U.S. EPA expects to present the draft documents to the Group on an informal basis for input before the formal RI/FS negotiating process commences. The detailed documents would include cost estimate information for conducting the RI/FS.

d) U.S. EPA currently expects that this OU1 RI/FS should cost in the range of \$500,000 - \$1,000,000. It is the intent of the parties that the draft RI/FS Scope of Work and/or Work Plan for OU1 will be developed and the OU1 RI/FS will be conducted in as cost-effective manner as possible.

e) After the detailed draft RI/FS Scope of Work and/or Work Plan for OU1 is ready, U.S. EPA intends to issue Special Notice Letters to initiate RI/FS negotiations for the Source Area OU1 with all appropriate PRPs, including any new PRPs identified through the screening sampling. U.S. EPA expects to identify new PRPs for these Source Area OU1 RI/FS negotiations using criteria similar to those it used for its previous Special Notice Letter for the Site.

f) During Source Area OU1 RI/FS negotiations, U.S. EPA will discuss with all identified PRPs their willingness to conduct the RI/FS (with full assistance from U.S. EPA in obtaining all necessary access to property). In the event the identified PRPs do not wish to conduct the RI/FS at that point, U.S. EPA will have made its best efforts to obtain all necessary concurrences from its Headquarters and from the U.S. Department of Justice to permit it to offer the Group and/or newly identified PRPs a cashout settlement, where the Group and/or its members and/or newly identified PRPs would pay a negotiated amount toward the cost of the Source Area OU1 RI/FS (in exchange for a covenant not to sue and contribution protection) and U.S. EPA would either (i) assume responsibility for performing and funding that RI/FS; or (ii) make such cashout funds available to the group of PRPs willing to assume responsibility for performing and funding that RI/FS. In a cashout agreement, the parties would work to define cashout shares that would approximate the costs of the RI/FS investigation directly related to the parcels for which they are responsible, and taking into account reliable sampling data that has already been gathered. During the negotiations, the Agencies will also work with the Group and/or newly identified PRPs to tailor the investigation of the individual parcels to take into account reliable sampling data that has already been gathered.

g) If U.S. EPA conducts the RI/FS for OU1 as part of a cashout agreement, it expects that the data would be available for release to the Group within no more than 2 years.

h) The Downgradient Groundwater OU2 would, to some extent, build on and benefit from the Source Area OU1 RI. The RI/FS for the Downgradient Groundwater OU2 would therefore be

deferred. The Agencies currently expect that they would not establish a formal statutory RI/FS negotiation period for the Downgradient Groundwater OU2 until some point after the Source Area OU1 investigation is completed. The parties expect that any RI/FS for the Downgradient Groundwater OU2 will take into account any benefits that may be derived from the hookups and any soil remediation in Source Area OU1.

### 3. General Principles

a) U.S. EPA will follow its policies to try to ensure that it ultimately obtains appropriate contribution of money and/or work from non-participating and newly-named PRPs. The U.S. EPA intends to seek to recover their response costs and hookup costs outside the scope of the AOC from other parties before pursuing the Group members for those costs.

b) U.S. EPA cannot agree to give the Group a covenant not to sue for past and future U.S. EPA costs at this point in the process. U.S. EPA can agree that it: (1) will pay the costs of the further screening sampling initially, (2) U.S. EPA will not seek to recover past costs (including the costs of the screening sampling) as part of the OU1 RI/FS negotiations, (3) assuming continued cooperation from the Group through the OU1 RA process (which will include consideration of the no further action alternative, among others), U.S. EPA staff will recommend forgiving its past costs as part of the final OU1 settlement; and (4) assuming continued cooperation from the Group through the OU2 RA process, U.S. EPA staff will recommend forgiving its remaining costs as part of any OU2 RA settlement. Based on the Agency's enforcement policies, U.S. EPA staff expects that ultimately the past costs will be forgiven. U.S. EPA will also take into consideration the fact that the Group has agreed to hookup wells where the drinking water does not exceed MCLs and where the drinking water has no detected levels of TCE, PCE, and/or 1,1,1-TCA and, if appropriate, may treat this action as a Supplemental Environmental Project (SEP).

c) At this time, the State will not make any commitments about its future cost recovery efforts. However, the State has agreed to defer the issue of recovery of its past costs and investigation and clean up at the Site – not requiring payment of those costs and investigation and clean up of the Site as part of the first partial consent order containing the hookup settlement in the State case (*People v. Precision Brand Products, Inc., et al.*, No. 2003CH000979, DuPage County). The first partial consent order will incorporate the relevant terms of the federal hookup settlement (the Administrative Order on Consent), including, among other things, Work to be Performed, the scope of release found in the Covenant Not to Sue and the Reservation of Rights. Additionally, the partial consent order will include a section which will waive the penalties sought in Counts I through IV because of the history and unique facts of this case, but only as to those defendants and third party defendants in the State action who sign the federal hookup settlement and related agreements, and so long as the parties fulfill their obligations under those agreements. The State reserves its rights to further pursue recovery of costs it has or will incur and a site investigation and clean up at any time it deems appropriate that is consistent with the other terms of this Agreement that apply to the State.

d) The Agencies and the PRPs reserve their rights to change their current expectations described above based on their re-evaluation of data and technical issues as more information on the Site is developed.

e) The Agencies will not agree to constrain their future exercise of enforcement discretion.

f) The Agencies at this time will not excuse the Group from potential liability for the Downgradient Groundwater OU2.

g) Neither the Group nor any individual participant in any way admits any liability and each reserves all rights to contest any future enforcement actions taken by the Agencies. The parties agree that this Agreement is a settlement document, pursuant to Rule 408 of the Federal Rules of Evidence, and that neither this Agreement, nor any part hereof, shall be admissible for any purpose in any judicial or administrative proceeding.

h) Neither this Agreement nor any other document, including the contemplated Administrative Order on Consent to implement the funding of the hookups, shall be construed or interpreted to bind any Group member to further participate in the OU1 or OU2 process described herein. Further, nothing in this Agreement shall be construed or interpreted to impose any cost, charge, or expense on any Group member.

i) The parties will work together to devise appropriate ways to promptly communicate with and inform the community of the actions contemplated herein and to seek their reaction and input on implementation details.

Ames Supply Company

By: \_\_\_\_\_

Date: \_\_\_\_\_

Arrow Gear

By: \_\_\_\_\_

Date: \_\_\_\_\_

Bison Gear & Engineering Co.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Fusibond Piping Systems, Inc.

By: \_\_\_\_\_

Date: \_\_\_\_\_

William Helwig

By: \_\_\_\_\_

Date: \_\_\_\_\_

Lindy Manufacturing Company

By: \_\_\_\_\_

Date: \_\_\_\_\_

Magnetrol International, Inc.

By: \_\_\_\_\_

Date: \_\_\_\_\_

The Morey Corporation

By: \_\_\_\_\_

Date: \_\_\_\_\_

Precision Brand Products, Inc.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Principal Manufacturing Company

By: \_\_\_\_\_

Date: \_\_\_\_\_

Rexnord

By: \_\_\_\_\_

Date: \_\_\_\_\_

Scot, Inc.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Tricon Industries, Inc.

By: \_\_\_\_\_

Date: \_\_\_\_\_

White Lake Building Corporation

By: \_\_\_\_\_

Date: \_\_\_\_\_

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